

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Fengenberg
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FILE:

R-216417

DATE: February 12, 1985

MATTER OF:

Wayne H. Coloney Co. Inc.

DIGEST:

1. GAO will not disturb determination and findings justifying negotiation for purchase of mobilization base item, since under 10 U.S.C. § 2304(a) (16), determination is final. However, GAO will consider whether findings support the determination. In addition, determination of itself does not justify sole source award when defense agency's immediate requirements apparently can be met by other suppliers.
2. GAO will deny protest against sole source award for mobilization base item when it is based on assessment of defense agency's requirements, amount needed to support producer's capability, and other factors particularly within the agency's expertise.

Wayne H. Coloney Company, Inc., protests the proposed sole source award of 10,073 30-millimeter ammunition shipping and storage containers designated CNU-332A/F to Lanson Industries, Inc. The United States Army Armament, Munitions and Chemical Command, Rock Island, Illinois, issued the solicitation, No. DAAA09-84-R-0483, on July 27, 1984. Coloney also protests the proposed sole source award of an additional 11,953 units (for a total of 22,026) to Lanson under a September 18, 1984, amendment to the solicitation.

We deny the protest.

The sole-source solicitation was issued to Lanson pursuant to 10 U.S.C. 2304(a)(16) (1982), which permits negotiations where the cognizant Secretary:

"Determines that (A) it is in the interest of national defense to have a plant, mine, or other facility, or a producer, manufacturer, or other

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supplier, available for furnishing property or services in case of a national emergency; or (R) the interest of industrial mobilization in case of such an emergency, or the interest of national defense in maintaining active engineering, research, and development, would otherwise be subserved."

In this case, an Assistant Secretary of the Army executed a class determination and findings (D&F) authorizing negotiation for a number of ammunition items and associated items "to maintain, establish or expand production capacity for ammunition." The D&F stated that because of the complexity of these items, sources of supply are limited. The Army believes that in the interest of national defense, these sources should be kept available. In addition, according to the D&F, in the event of a national emergency, requirements for these supplies will substantially exceed the production capacity of all companies. Therefore, the Army concludes, in addition to maintaining the manufacturing facilities of all companies, it is essential that their engineering and production skills be maintained in order to be available for training other companies in the manufacture of the supplies in question.

In the appendices to the D&F, Lanson is identified as the sole authorized mobilization base producer of the ammunition containers for a quantity in excess of the 22,026 being procured here. In the report on the protest, the contracting officer indicates that there are insufficient requirements to justify expansion of the mobilization base to more than one producer.

The mobilization base producer program encompasses planning with possible industrial producers of critical items that the Department of Defense (DOD) will need for mobilization in preparing for war or other national emergencies so as to assure a capability for sustained production of such essential military items. See American Air Filter Company, Inc., 55 Comp. Gen. 703, 705-706 (1976), 76-1 CPD ¶ 73. The results of this planning are ordinarily reflected on an approved DD Form 1519, "DOD Industrial Preparedness Program Production Planning Schedule," which is essentially an agreement between the government and the mobilization base producer regarding what is needed to sustain the producer's production capability. See American Air Filter Company, Inc., 55 Comp. Gen. supra, at 706; True Machine Co., R-215885, Jan. 4, 1985, 85-1 CPD ¶ _____. Before

a DD Form 1519 is executed, government production planning officials survey the facilities in question and negotiate with plant management the production planning schedule set forth on the DD Form 1519. See True Machine Co., R-215885, supra at 3. After agreement is reached on a DD Form 1519, a firm then becomes a mobilization base producer. American Air Filter Company, Inc., 55 Comp. Gen. supra; True Machine Co., R-215885, supra.

Coloney protests that the designation of Lanson as the sole mobilization base producer of this item is arbitrary and capricious because Coloney also can and has produced this item and because the quantity being procured from Lanson allegedly is for more than that needed to keep a mobilization base producer viable. In this regard, Coloney asserts that only 2,000 units could maintain its own production capability, and that, based upon Coloney's intimate knowledge of the facilities and capabilities of Lanson (a previous subcontractor to Coloney), this same quantity is all that would be necessary to support Lanson's production capability.

We have previously found that sole source awards may properly be made under the authority of 10 U.S.C. § 2304(a) (16). See, e.g., Norton Company, Safety Products Division, 60 Comp. Gen. 341, 351 (1981), 81-1 CPD ¶ 250 and cases cited therein. As we stated in National Presto Industries Inc., R-195679, Dec. 19, 1979, 79-2 CPD ¶ 418 at 4, in a procurement negotiated under this section, the normal concern with ensuring maximum competition is secondary to the needs of industrial mobilization. The award of a contract for current needs becomes not only an end in itself, but a means to another goal--the creation and/or maintenance of mobilization capacity. For this reason, contracts are awarded to particular plants or producers to create or maintain their readiness to produce essential military supplies in the future.

Further, in reviewing the propriety of a sole source award under this section, our Office will not disturb the findings justifying the determination to negotiate, since they are made final by statute. 10 U.S.C. § 2310(b) (1982); Norton Co., 60 Comp. Gen. supra, at 351-352, 81-1 CPD ¶ 250 at 18. However, we will consider whether the findings of fact legally support both the determination to negotiate and the determination to sole source the requirement. Id.

We have held that 10 U.S.C. § 2304(a)(16) does not, as a matter of course, justify a procurement restricted to a single source when it appears that immediate mobilization base requirements can be met by other suppliers. Soft America, Inc., B-193759, July 12, 1979, 79-2 CPD ¶ 28. Moreover, in the case of a sole source, the D&F should state all findings necessary to support the designated source.

Here, we find that although the D&F clearly justifies negotiation, it does not, in and of itself, make sufficient factual findings to support a sole source award. In this regard, the D&F designates only Lanson as a mobilization base producer for this item and designates the number of items which can be procured under authority of 10 U.S.C. § 2304(a)(16). There is no specific finding in the D&F which indicates that only Lanson has the requisite exclusive capability or any other specific findings why there is only one mobilization base producer for this item. Further, the D&F provides no information or findings as to the derivation of the number of items to be procured under this authority. Finally, the D&F does not indicate that it is based on any particular review of Lanson's production capability or a DD Form 1519.

Although we think the D&F should have been more precise so as to specifically justify the sole source award to Lanson, we note that neither Lanson nor the Army contracting officer believes that Army requirements do justify having more than one mobilization base producer. Lanson states that the authorized amount needed to support its production capabilities was the subject of a DD Form 1519 and various reviews by cognizant DOD activities, all of which determined that a quantity of 2,000 units is far less than necessary to support Lanson's mobilization capabilities. Further, the D&F, justifying Lanson as the sole mobilization base producer for a quantity in excess of the 22,026 ammunition containers being procured here, is presumably based on the Lanson DD Form 1519 assessment of capability and production capacity as well as overall military and industry factors, particularly within the Army's expertise. The protester's assertions, on the other hand, are based on its own more limited experience with Lanson as a subcontractor for the same item.

Under these circumstances, we find that neither the capabilities of Coloney nor the requirement for maximizing competition require the Army to procure the ammunition containers competitively. As we stated in National Presto, R-195679, supra, the DOD is responsible for developing an industrial preparedness program that will ensure the nation's ability to respond to a military emergency. In implementing this goal, the department must continually reassess current and future weaponry needs and decide which producers are in the best position to rapidly expand production if necessary. The decision as to which and how many producers of a particular item must be kept in active production is a complex judgment which must be left to the discretion of the military agencies. We would only overturn such a decision if the evidence convincingly demonstrated that the agency had abused its discretion. We cannot find that the Army abused its discretion in this case.

Coloney's protest is denied.

Larry R. Van Cleave
for Comptroller General
of the United States